

# **COLLABORATIVE LAW PARTICIPATION AGREEMENT**

## **PURPOSE**

[FULLNAME1] and [FULLNAME2] (“the Clients”) have chosen to use the collaborative law process to resolve their family differences. [FIRSTNAME1] is represented by [LAWYER1]. [FIRSTNAME2] is represented by [LAWYER2]. The “Collaborative Team” consists of the collaborative lawyers together with any additional collaborative professionals who sign participation agreements. We adopt this conflict resolution process, which relies on honesty, cooperation, and professionalism geared toward the future well-being of the restructured family. Our goal is to eliminate the negative economic, social and emotional consequences of litigation. We commit to the collaborative law process to resolve differences with the goal of achieving a resolution that is acceptable to the clients under the circumstances.

## **COMMITMENTS**

We commit to a collaborative problem-solving process which is based on:

1. Identification of the goals and interests of each client;
2. The Clients’ empowerment to make decisions;
3. Full disclosure of relevant information;
4. The collaborative lawyers’ assistance to their respective clients in identifying issues, analyzing relevant information, developing options, and understanding consequences; and
5. The lawyers’ commitment to the Protocols of Practice for Collaborative Family Lawyers promulgated by the Collaborative Law Institute of Texas, Inc.

## **OTHER COLLABORATIVE PROFESSIONALS, EXPERTS AND ADVISORS**

Unless otherwise agreed in writing, if other collaborative professionals, experts or advisors (hereinafter sometimes referred to as “consultants”) are needed, they will be engaged jointly as neutrals. The Clients may engage consultants for purposes of communication facilitation, financial and tax advice, valuation, cash flow analysis, [resolution of parenting issues,] and assistance with any other issue that requires specialized or expert advice and/or recommendations. The Clients will agree in advance how consultants will be paid. Unless the Clients, collaborative lawyers, and consultants agree otherwise in writing, the consultants engaged are disqualified from testifying as fact or expert witnesses, and their writings are inadmissible in a judicial proceeding between the Clients. This disqualification does not apply to individuals engaged by the Clients to assist them in other matters independent of the collaborative law process, such as preparation of tax returns and estate planning. Nothing contained herein precludes a collaborative lawyer from consulting with other professionals as necessary to better understand the factual and legal issues presented in the case.

Consultants may communicate with Clients, the lawyers, other consultants engaged in the collaborative law process, and any lawyer consulted for a second opinion during the collaborative law process.

Once a neutral consultant has been engaged to serve as a member of the Collaborative Team and has signed a Participation Agreement, neither client may unilaterally terminate his or her services. A request to remove or replace such a consultant will be an agenda item for discussion by the entire Collaborative Team. Insistence upon terminating such services may be grounds for the termination of the collaborative law process. The Clients may agree to the termination of the services of such a consultant and the replacement with another consultant to serve on the Collaborative Team. This provision does not prohibit either client from unilaterally substituting a new collaborative lawyer as his or her lawyer.

### **COMMUNICATION**

**Constructive and Respectful Communication.** We agree to effectively and honestly communicate with each other. All written and verbal communications will be respectful and constructive. Joint meetings will focus on those issues necessary to the constructive resolution of the matter. We agree not to engage in unnecessary discussions of past events.

**Settlement Discussions.** The Clients agree to discuss settlement with each other only in the joint meetings, unless they agree otherwise. A request to discontinue any such discussion outside of a joint meeting will be immediately honored. Settlement issues will not be discussed at unannounced times in any manner. The lawyers plan agendas for settlement meetings and draft or review documents, but no agreements will be made by the lawyers on behalf of the Clients.

**Electronic and Written Communication.** The Clients authorize the use of unencrypted email, facsimile, or any other electronic communications to relay information and deliver documents in the collaborative law process. Joint communications of agendas, minutes, drafts of documents and agreements may be sent simultaneously to the Clients and the Collaborative Team.

**Transparent Communication.** If a client sends any written communication to the other client's collaborative lawyer, the client will copy his or her own lawyer with the communication. A written communication sent by a collaborative lawyer to the other client will be copied to the client's collaborative lawyer. A collaborative lawyer shall promptly forward all client-to-client communications to all other team members.

**Written Team Communication.** In order to facilitate the process, there are times that the Collaborative Team may engage in written internal communications intended only for the Collaborative Team. A written communication designated as a "team communication" will not be communicated to the Clients.

**Include the next two paragraphs if a minor child is involved:**

**Communications Regarding Children.** The Clients acknowledge that inappropriate communications can be harmful to their child[ren]. Communication with the minor child[ren] regarding the case will occur only as agreed by the Clients.

Our goal is to reach an agreement that promotes the best interests of the child[ren]. No client will unilaterally seek a custody evaluation while the matter is in the collaborative law process. No member of the Collaborative Team will interview the minor child[ren] unless both Clients agree, and the child[ren]'s therapist and neutral child specialist, if any, approves.

### **FULL DISCLOSURE**

The Clients agree to make such full and candid exchange of information as is necessary to make a proper evaluation of the case. Full disclosure of the nature, extent, value of, and all developments affecting: the client's income, assets and liabilities; and all other relevant matters is required. [Full disclosure of all relevant information relating to the Clients' children is also required.] Any material change in information previously provided must be promptly updated. The Clients authorize their respective lawyers to fully disclose all information which in the lawyer's judgment must be provided to the Collaborative Team in order to fulfill this commitment.

No formal discovery procedures will be used unless specifically agreed to in writing. However, the Clients may be required to sign a sworn statement making full disclosure of their income, assets and debts (a sworn inventory and appraisal). Affidavits may be utilized to confirm specific matters, such as the unavailability of certain information, or the existence or non-existence of documents or tangible things.

We shall maintain a high standard of integrity and shall not take advantage of each other or of known mistakes, errors of fact or law, miscalculations or other inconsistencies, but shall identify and correct them.

### **CONFIDENTIALITY**

In accordance with the Texas Family Code, the Clients agree to maintain the confidentiality of all oral and written communications relating to the subject matter of the case made by the Clients or the Collaborative Team, whether before or after the institution of formal judicial proceedings. The Clients agree that all oral communication and written material in the collaborative law process will only be admissible or discoverable if it is admissible or discoverable independent of the collaborative law process. This paragraph does not apply to reports of abuse or neglect required by law, agreed formal discovery, sworn documents prepared in this matter, a fully executed collaborative law settlement agreement or evidence of fraud.

A client and/or his or her collaborative lawyer is free to disclose all information to a lawyer hired to render a second opinion for that client in the collaborative law process or to that client's successor collaborative lawyer. In the event the collaborative law process is terminated,

a client and/or his or her collaborative lawyer are free to disclose all information to that client's litigation lawyer.

This provision does not prohibit disclosure by a member of the Collaborative Team of case information for educational purposes without disclosing the identities of the Clients, nor does it prohibit participation by the Clients or either of them in educational forums or media interviews to discuss the collaborative law process.

### **OTHER LEGAL OPINIONS**

Neither client shall consult a litigation lawyer about this matter so long as the collaborative law process continues, except for the limited purpose of obtaining a private opinion as to the potential outcome of the case in an adversarial proceeding. If at any time in the past twelve months or during the collaborative law process a client privately secures an opinion about this matter from another lawyer, including a litigation lawyer, the client agrees to disclose the identity of such lawyer to the Collaborative Team. If the opinion was sought prior to the signing of this Participation Agreement, then the client represents that the identity has been disclosed to the Collaborative Team before this Participation Agreement was signed. If the opinion is sought during the collaborative law process, the client agrees to disclose the identity before the client's initial consultation with the lawyer and promptly inform the Collaborative Team of the occurrence of each consultation the client has with such lawyer.

The client should give any lawyer offering an opinion on an issue(s) all information necessary to give informed advice, including reports of consultants whose services have been engaged in the collaborative law process. The Clients agree the work product and opinion of such privately engaged lawyer are attorney-client privileged and are not required to be disclosed in the collaborative law process.

The Clients agree a lawyer privately engaged to offer an opinion, and any other lawyer associated in the practice of law with that lawyer, are not disqualified from testifying as a fact or expert witness pertaining to attorneys' fees and are not prohibited from representing the consulting client in an adversarial proceeding between the Clients.

If both Clients jointly seek a second opinion from a lawyer then the opinion is to be disclosed to the Collaborative Team, and the lawyer is to be considered a neutral expert and is disqualified from testifying as a fact or expert witness in an adversarial proceeding between them and is prohibited from representing either of them in an adversarial proceeding between the Clients.

The Clients agree the work product, opinions, mental impressions, and the facts upon which they are based, of a consulted lawyer are not discoverable and are inadmissible in an adversarial proceeding regarding the case or in any other adversarial proceeding between the Clients, unless the Clients, the collaborative lawyers and consulted lawyer agree otherwise in writing.

## AGREEMENTS

The Clients may agree to the entry of temporary orders. Upon request of either client or as required by local rules, the Code of Conduct set out in Exhibit "A" attached hereto shall be filed with the court as mutual injunctions. Further, whether entered as injunctions or not, the Clients agree to abide by the terms of Exhibit "A" until it is modified by court order or written agreement. The Code of Conduct and a fully executed Collaborative Law Settlement Agreement are contracts between the Clients and may be the basis for a claim against the client violating their terms in the event of termination of this process. In the event enforcement is sought, the collaborative lawyers shall withdraw.

Any partial or final written agreement, which is signed by both Clients and their respective collaborative lawyers, may be filed with the court as a collaborative law settlement agreement and may be made the basis of a court order. The Clients and the collaborative lawyers shall cooperate in preparing the documents necessary to effectuate the Clients' agreement. A collaborative lawyer may require the preparation and execution of all closing documents necessary to complete the case before entry of judgment. Either or both collaborative lawyers shall be permitted to appear in court to have agreed judgment(s) entered.

## LEGAL PROCESS

**Suspension of Court Intervention.** The Clients and the collaborative lawyers agree that court intervention shall be suspended while the Clients are using the collaborative law process. Seeking court intervention for a judicially-imposed decision regarding an issue in the case automatically terminates the process.

No motion or document will be prepared or filed which would initiate court intervention, other than a [joint] Petition [for Divorce/to Modify Prior Order/other matter] [and an Answer]. If necessary, service of citation will be accepted by the Clients' respective lawyers. No hearing shall be set thereafter, other than to enter agreed orders and judgments.

**Termination by Client.** A client who has decided to terminate the collaborative law process shall notify his or her collaborative lawyer in writing. That client's collaborative lawyer shall then give prompt written notice to the other client through his or her collaborative lawyer and to the court. Upon notice of termination of the collaborative law process to the other collaborative lawyer, there will be a 30-day waiting period (unless there is an emergency) before a court hearing to permit each client to engage another lawyer and make an orderly transition.

If a client chooses to terminate the collaborative law process by seeking court intervention for a judicially-imposed decision, both collaborative lawyers shall withdraw. Neither collaborative lawyer (including any lawyer associated in the practice of law with the collaborative lawyer) may serve as a litigation lawyer on behalf of a client in this case or in any other matters between the Clients thereafter (other than a suit to enforce payment of the lawyer's fees). Each collaborative lawyer will cooperate in transferring the file.

**Termination by Collaborative Lawyer.** The collaborative law process must be terminated if a client engages in any of the following behaviors and persists in doing so after counseling by the client's collaborative lawyer:

1. refuses to disclose information, including the existence of documents, which in the collaborative lawyer's judgment must be provided to the other client or the Collaborative Team;
2. answers dishonestly any inquiry made by a client or member of the Collaborative Team;
3. takes an action that results in compromising the integrity of the process; or
4. fails or refuses to take an action which failure or refusal compromises the integrity of the process.

Under any of these circumstances, if the offending client refuses to terminate the collaborative law process, each client acknowledges that his/her respective collaborative lawyer has a duty to terminate the collaborative law process on behalf of the client, and by signing this agreement, each client authorizes his/her collaborative lawyer to terminate the collaborative law process by written notice to the Collaborative Team.

**Withdrawal of Lawyer.** If the collaborative law process is terminated, both collaborative lawyers shall immediately withdraw. If there is no termination of the collaborative law process, either collaborative lawyer may withdraw unilaterally by giving three days' written notice to his or her client and the other collaborative lawyer, unless substituted by a successor collaborative lawyer in which case no such notice is required. Notice of withdrawal of a collaborative lawyer does not necessarily terminate the collaborative law process; however, in order for the collaborative law process to continue, the client whose collaborative lawyer has withdrawn must engage a new collaborative lawyer who will agree in writing to be bound by this Participation Agreement. If the client whose collaborative lawyer has withdrawn chooses to represent himself or herself, the collaborative law process terminates and the other collaborative lawyer must withdraw.

## **REPRESENTATION AS TO PROPERTY**

The final documents reflecting the Clients' financial settlement may include the following, or similar provisions, if either client requests the inclusion thereof:

**Representations and Disclosures.** The Clients represent to each other that the property listed represents all of the property in which either of them may have an interest.

**Separate Property.** Any property which is not listed or described and which is later determined to be the separate property of a client shall be and remain the separate property of that client.

**Property and Liabilities Mistakenly Omitted.** Any mistakenly omitted property which is not listed or described and is later determined to be the community property of the Clients, shall be subject to future division by the court.

Any mistakenly omitted liabilities which are later determined to have been the joint liabilities of the Clients shall be subject to future allocation by the court.

**Property and Liabilities Intentionally Omitted.** Any community assets later determined to have been intentionally and fraudulently undisclosed by a client are set aside 100% to the other client. Any liabilities determined to have been intentionally and fraudulently undisclosed by a client are allocated 100% to the client who incurred the liability.

### **MEDIATION**

Prior to termination of the collaborative law process, the Clients agree to give serious consideration to participation in mediation with a mediator who has received training in the collaborative law process.

### **PROFESSIONAL FEES**

The Clients understand that the Collaborative Team members are entitled to be paid for their services. The Clients agree to make funds available from their community or separate estates, as needed, to pay these fees. The Clients understand that, if necessary, one client may be asked to pay all fees (including fees of the other client's lawyer) from community property managed solely by him or her (e.g., his or her salary) or from separate funds. The Clients agree that, to the extent possible, all fees and expenses incurred by both clients shall be paid in full prior to entry of a final judgment. Nonpayment of fees is cause for withdrawal by a Collaborative Team member, but not for a termination of the collaborative law process.

### **USE OF INTERNS AND COLLABORATIVE PROFESSIONALS AS OBSERVERS**

The Clients agree that interns and collaborative professionals may observe one or more joint meetings in this collaborative law process, provided the observers agree to sign a written observation agreement preserving the confidentiality of any such observed meeting. The observer will not participate in the joint meetings except as an observer. Such observing shall be at no charge to the Clients.

### **UNDERSTANDINGS**

The Clients understand that each collaborative lawyer is independent from the other and each represents and is an advocate for his or her client only in the collaborative law process. No attorney-client relationship is created between one client's collaborative lawyer and the other client by entering into this Participation Agreement or the collaborative law process. No legal duty, by contract or otherwise, is owed to a client by the other client's collaborative lawyer.

The Clients acknowledge the following: There is no guarantee that the collaborative law process will be successful in resolving the matter. The collaborative law process cannot eliminate concerns about the differences that have led to the current conflict. The Clients are expected to assert their own interests and their respective collaborative lawyers will help each of

them to do so. The collaborative law process, can involve intense good-faith negotiation, but best efforts will be used to create options that meet the interests of both clients. Compromise may be needed to reach a settlement of all issues. Although the likely outcome of a litigated result may be discussed, the threat of litigation will not be used.

The parties understand that by agreeing to this process, they are giving up certain rights, including the right to conduct formal discovery (other than sworn inventories and appraisements), the right to participate in adversarial court hearings, and other procedures provided by the adversarial legal system, unless the process is terminated. The terms of this Participation Agreement may be modified, in a manner consistent with Texas law, only by written agreement signed by the Clients and the collaborative lawyers. However, the prohibition against either collaborative lawyer or any lawyer associated with that collaborative lawyer representing their client in contested matters against the other client is irrevocable and may not be modified.

Both clients and their respective collaborative lawyers hereby agree to comply with the spirit and letter of this Participation Agreement. Both clients and their collaborative lawyers acknowledge that they have read this Participation Agreement, understand its terms and conditions, and agree to abide by them.

Signed on \_\_\_\_\_.

---

[FIRSTNAME1]  
Street Address  
City, State, Zip code  
Email

---

[FIRSTNAME2]  
Street Address  
City, State, Zip code  
Email

---

[LAWYER1]  
Collaborative Lawyer for [FIRSTNAME1]  
SBN #  
Street Address  
City, State, Zip code  
Office Phone  
Fax Number  
Email  
Paralegal's email

---

[LAWYER2]  
Collaborative Lawyer for [FIRSTNAME2]  
SBN #  
Street Address  
City, State, Zip Code  
Office Phone  
Fax Number  
Email  
Paralegal's email

**EXHIBIT “A”  
CODE OF CONDUCT**

Either client may:

1. Make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, entertainment, education and medical care.
2. Make expenditures and incur indebtedness for reasonable lawyers’ fees and consultants’ fees and expenses in connection with this matter.
3. Make withdrawals from accounts in financial institutions only for the purposes authorized by this agreement.
4. Engage in acts, make expenditures, incur indebtedness, make investments, and acquire, sell and transfer assets, as is reasonable and necessary to the conduct of either client’s usual investment activities, business and occupation, subject to all such activities being fully disclosed and accounted for to the other client.

The Clients agree not to:

1. Communicate with the other client in an offensive manner.
2. Place telephone calls without a legitimate purpose of communication.
3. Destroy, remove, conceal, encumber, transfer, or otherwise harm or reduce the value of the property of one or both of the clients.
4. Falsify any writing or record relating to the property of either client.
5. Damage or destroy the tangible property of one or both of the clients, including any document that represents or embodies anything of value.
6. Tamper with the tangible property of one or both of the clients, including any document that represents or embodies anything of value, thereby causing monetary loss to the other client.
7. Sell, transfer, assign, mortgage, encumber, or in any other manner alienate any of the property of either client, whether personalty or realty, and whether separate or community, except as specifically agreed to in writing or as specified in this agreement.
8. Incur any indebtedness, including but not limited to borrowing against any credit line or unreasonably using credit cards or cash advances against credit or bank cards, except as specifically agreed to in writing, or as specified in this agreement.
9. Make withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically agreed to in writing, or as specified in this agreement.
10. Spend any sum of cash in the possession or subject to the control of either client for any purpose, except as specifically agreed to in writing, or as specified in this agreement.
11. Withdraw or borrow in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically agreed to in writing.

12. Enter any safe-deposit box in the name of or subject to the control of either client, whether individually or jointly with others, unless the Clients accompany each other and jointly enter the box for the sole purpose of inventorying or dividing its contents by mutual agreement.
13. Withdraw or borrow in any manner all or any part of the cash surrender value of life insurance policies on the life of either client, except as specifically agreed to in writing.
14. Change or in any manner alter the beneficiary designation on any pension, retirement plan or insurance policy, except as specifically agreed to in writing.
15. Cancel, alter, fail to renew or pay premium, permit to lapse or in any manner affect or reduce the value of the present level of coverage of any life, disability, casualty, automobile, or health insurance policies insuring the Clients' property or persons, except as specifically agreed to in writing.
16. Change any provisions of any existing trust or will or execute a new trust or will without the prior written consent of the other client.
17. Terminate or in any manner affect the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping, or yard maintenance, at the residence of the other client or in any manner attempt to withdraw any deposits for service in connection with those services, except as specifically agreed to in writing.
18. Exclude the other client from the use and enjoyment of his or her respective residence.
19. Enter or remain on the premises of the residence of the other client without the other's consent.
20. Open or divert mail addressed to the other client, except as specifically agreed to in writing.
21. Sign or endorse the other client's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempt to negotiate any negotiable instrument payable to the Clients or the other client without the personal signature of the other client.
22. Take any action to terminate or limit credit or charge cards in the name of the Clients or the other client, except as specifically agreed to in writing.
23. Transfer balances between credit cards or open new credit card accounts, except as specifically agreed to in advance in writing by the Clients.
24. Pay more than the [outstanding balance OR \$\_\_\_\_\_ per month OR minimum monthly balance] owed on a credit card or charge account, except as specifically agreed to in writing.
25. Take any action to freeze or put a hold on any account with any financial institution from which the other client has the right to withdraw funds for purposes consistent with the authorizations contained in this agreement.
26. Operate or exercise control over the motor vehicles in the possession of the other client, except as specifically agreed to by the Clients.
27. Discontinue or reduce the withholding for federal income taxes on either client's wages or salary, except as specifically agreed to in writing.

28. Destroy, dispose of, or alter any financial records of the Clients, including but not limited to records from financial institutions (including canceled checks and deposit slips), all records of credit purchases or cash advances, tax returns, and financial statements.
29. Destroy, dispose of, or alter any relevant e-mail or other electronic data, whether stored on a hard drive or on a diskette or other electronic storage device.
30. Conduct surveillance of the other client's activities, including accessing the other client's emails, computer files and voice mail messages, and including the use of an investigator, detective or other individual paid for or engaged by a client or third party, or use of electronic listening or tracking devices, until this collaborative law process is terminated.
31. Engage the services of a stand-by litigation lawyer so long as the collaborative law process continues, except for the limited purpose of giving a second opinion in accordance with the provisions of this agreement set out in "Other Legal Opinions."
32. Exercise any stock options and warrants except as specifically authorized in advance by written agreement of the Clients.
33. Exercise any general or limited power of attorney, whether or not recorded, granted by one client to the other[optional: , except for directives to physicians, living wills, health care or medical powers of attorney, and HIPAA releases] .
34. Pay any indebtedness owed by the Clients or either of them prior to the date the indebtedness is due, unless agreed to specifically in writing by the Clients.
35. Create or contribute to, or reduce the value of or withdraw from or terminate, any trust of any kind or nature except as specifically authorized in advance by written agreement of the Clients.
36. Make any gift of any kind or nature, other than usual and customary gifts to family members of either client or mutual friends or their child(ren).
37. Create or contribute to any uniform gifts/transfers to minor act accounts or any trust of any kind or nature, except as specifically agreed to in advance in writing by the Clients.
38. File any extension or form with the Internal Revenue Service with regard to federal tax liability for any years of the marriage that limits the other client's choice of filing status, unless agreed to in advance in writing by the Clients.
39. File any federal income tax return or amendment to any federal income tax return for any year of the marriage during the pendency of the matter without first providing a true and correct copy of such proposed return to the lawyer of record for the other client at least 14 days in advance of the proposed tender to the Internal Revenue Service. This shall apply whether or not such filing is proposed to be by electronic methods or hard copy filing.